



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/166565

PRELIMINARY RECITALS

Pursuant to a petition filed June 09, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on June 30, 2015, at Milwaukee, Wisconsin. The record was held open for 7 days post-hearing for additional evidence. No evidence was submitted. The record closed on June 16, 2015.

The issue for determination is whether the agency properly seeks to recover an overissuance of child care benefits in the amount of \$5,793.38 for the period of June 29, 2014 – September 30, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: Lareina Horton

Milwaukee Early Care Administration – MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. [REDACTED] is the father of Petitioner's youngest child.

3. On June 20, 2014, [REDACTED] applied for FS benefits. He reported a household of one and Petitioner's address as his mailing address. He reported he was not employed.
4. On June 26, 2014, the Petitioner reported to the agency that [REDACTED] was residing in her home temporarily. The agency did not update the Petitioner's case at that time.
5. On September 29, 2014, the Petitioner completed a renewal. She reported [REDACTED] is not living with in the household. The agency updated the Petitioner's case at that time adding [REDACTED] to the household for purposes of child care benefits for the period of June 26, 2014 – September 29, 2014.
6. On October 2, 2014, the Petitioner filed an affidavit with the circuit court affirming that [REDACTED] was not living with her at that time.
7. [REDACTED] was not employed or in any other approved activity from June 29, 2014 – September 30, 2014.
8. On May 27, 2015 the agency issued a Child Care Client Overpayment Notice and worksheet to the Petitioner and [REDACTED] informing them that the agency intends to recover an overissuance of child care benefits in the amount of \$5,793.38 for the period of June 29, 2014 – September 30, 2014. The notice informed the Petitioner that the overissuance was due to agency error.
9. On June 9, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Wis. Stat. § 49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat. § 49.155, and thus they are within the parameters of § 49.195(3). Recovery of child care overpayments also is mandated in the Wis. Admin. Code, § DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Admin. Code, § DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

A parent is eligible for child care services if she needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat., § 49.155(1m)(a); W-2 Manual, § 15.2.0. The agency shall recover child care payments if the authorized payments would have been less because the parent was absent from an approved activity while the child was in care. Child Day Care Manual, Chapter 2, § 2.3.1. If both parents are in the household both must be working or attending W-2 activities. Wis. Adm. Code, § DCF 101.26(1).

There is no dispute that the agency paid for child care services during the period in question. The agency asserts that child care was not necessary during the overpayment period because [REDACTED] was not working, he was living in the home, he was a co-parent of at least one child in the home, and therefore he was available to provide child care. The agency produced [REDACTED]'s applications for benefits in June and July, 2014 listing Petitioner's address as his residence. The agency also produced a handwritten statement from the Petitioner dated June 26, 2014 stating that [REDACTED] is residing temporarily in her home. In addition, the agency produced numerous notices issued to [REDACTED] at the Petitioner's address which were not returned to

the agency. The agency also produced [REDACTED]'s voter registration indicating that he registered to vote on November 6, 2012 and listed the Petitioner's address as his own.

The agency worker testified at the hearing that the agency has coded this an agency error because if the agency had properly updated the Petitioner's case in June, 2014 when [REDACTED] applied for FS benefits and when the Petitioner provided the written statement that [REDACTED] was residing with her, the household would have been found ineligible for benefits. The Petitioner would not be in a position of having to repay benefits for which she was not eligible. The agency did note, however, that it is required by law to collect an overissuance of benefits even if it was due to an agency error.

The Petitioner does not dispute that [REDACTED] was not working or in any other approved activity during the overpayment period and that he is the father of one of her children. She does dispute the allegation that he was living with her. She testified that she provided the June 26, 2014 written statement that he was residing with her at his request. During her testimony, however, Petitioner provided inconsistent statements saying that he resided with her for a short period and then that he never resided with her. The Petitioner was given time post-hearing to produce information from her landlord or any other documentation to support her claim that he was not living with her. No documentation was provided.

Based on the evidence submitted at the hearing, I must conclude that the agency has met its burden by a preponderance of the evidence that [REDACTED] was residing with the Petitioner during the overpayment period. Because he was not working or was not engaged in an approved activity, the household was not eligible for child care benefits during that time. I further conclude that the overissuance is due to agency error because the Petitioner did report [REDACTED] in her household in June, 2014 and the agency failed to properly update the case. However, as noted by the agency, overissuances due to agency error must still be recovered.

I reviewed the child care issuance history and the calculation of the overpayment. I find no error in the agency's calculation. Therefore, I conclude the agency properly seeks to recover an overissuance of child care benefits to the Petitioner in the amount of \$5,793.38 for the period of June 29, 2014 – September 30, 2014.

CONCLUSIONS OF LAW

The agency properly seeks to recover an overissuance of child care benefits to the Petitioner in the amount of \$5,793.38 for the period of June 29, 2014 – September 30, 2014.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 29th day of September, 2015

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 29, 2015.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud